

**LAKE COUNTY BOARD of ADJUSTMENT**  
**January 9, 2013**  
**Lake County Courthouse Large Conference Room (Rm 317)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Clarence Brazil, Sue Lavery, Mike Marchetti, Paul Grinde

**STAFF PRESENT:** Joel Nelson, Karl Smithback, Robert Costa, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm.

Clarence noted two corrections on pg. 7. In the first words on the page, 'she' was inserted after 'Sue said'. In the second large paragraph in the third line from the bottom between amendment and 45, 'would take' replaced 'was'. Sue observed a correction on pg. 5, 6 lines from the bottom, where 'should' replaced 'could' after 'camp was sitting in'. In the next to last paragraph on pg. 1, 5 lines from the bottom, Robert added "MT Department of Environmental Quality and/or Environmental Health review" instead of 'review'.

**Motion made by Mike Marchetti, and seconded by Sue Lavery, to approve the Dec. 12, 2012 meeting minutes as amended. Motion carried, all in favor.**

Mike moved along to the next agenda item, the Redmond variance. Paul Grinde recused himself for this item and moved to sit with the public.

Joel noted that although this hadn't appeared on the agenda, the Marchetti variances were withdrawn.

**REDMOND VARIANCE—FINLEY POINT (4:03 pm)**

Robert Costa presented the staff report. (See attachments to minutes in the January 2013 meeting file for staff report.)

Sue asked for clarification on the square footage. She confirmed with Robert that there was currently 627 square feet of living space according to the submitted materials. Robert clarified they weren't proposing an increase in impervious surface area, according to the materials. It would be pretty much within the same footprint and drip line. He verified for Mike that the living space was expanded, but not beyond 1000 square feet. Mike checked that they were going to remove a deck. Robert said they were replacing it.

Mike asked how the replacement deck mapped out with respect to the lake: was it farther away or closer? Robert said the existing deck was located within the 50-foot buffer. Unidentified person said the existing deck was within the 20-foot buffer. Robert said they were not increasing impervious surface area and they were definitely taking the deck further away from the lakeshore protection zone, and it would be entirely outside the 20-foot zone if any portions were currently within it. Sue checked that it was still within the 50-foot buffer and Robert confirmed.

Sue looked at the site map. She asked which of the houses shown were involved. Robert pointed out on the site diagram where the main house and the guest house were. Other houses shown were on other properties. She checked that the red line on the site diagram was the 20-foot line. Robert showed where the property ended.

Joel referred to pg. 12, #7 and the 627 square footage of the living area. Maybe the applicant could clarify that. They could acknowledge that could be an error in the staff report and fix that.

Clarence asked why denial was recommended. Robert referred to pg. 17.A. Based on the recommended findings, they didn't find that compliance would limit the reasonable use of the property. Further, there were other areas where a guest house could be located that could be permitted based on the definitions and standards without a problem if the owners wanted to replace or expand the guest house. They also found no reason to find for item B. He asked if Clarence wanted him to go over others. Clarence did not.

Roland Redmond spoke on behalf of he and his wife's application. He thanked the Board for their public service and staff for their review. He couldn't dispute most of the findings or interpretations. He thought the recommendation to deny the request boiled down to the definition of 'reasonable' and 'reasonable use' and a 'reasonable alternative' to what they proposed. They had an existing non-conforming guest house, conveniently located about 25 feet from their existing house. The two structures shared the same water system, power, electricity and septic. He asked if it was reasonable to expect them to tear it down and relocate it 300 or 400 feet back to the back corner of their lot to gain an additional bedroom and bathroom. Was it reasonable or viable in an economic sense for them to raze the guest house and rebuild it 400 feet away where there was no infrastructure?

Roland acknowledged that he and his wife were fully aware of the zoning restrictions when they bought the property in 1998. There were other factors of which they weren't aware and didn't appreciate 15 years ago that have led to this request. They hadn't owned recreational property previously. They couldn't accurately anticipate how their use and enjoyment of lake property might evolve. They both had siblings in the east, grown children, grandchildren and parents still living. The large extended family gathered at their place in Finley Point. They had two months of relatives in the summer, which he wouldn't have predicted at the time they purchased the property. Health issues have brought the family together. They were looking for more space to accommodate the family and enjoy times together. He offered to answer specific questions.

Sue asked for clarification on pg. 12 on the total square footage of living area for the completed structure. Paul Bishop identified himself as the designer. Currently there were 627 square feet on the main level. They would add 282 square feet with the second story bedroom addition for a total livable space of 909 square feet. That would take place within the existing impervious surface. Mike checked that the lower level calculation included the covered deck area that looked like it would become interior living space. Paul B said no. He only mentioned interior livable space. The deck would be part of the impervious space. Mike pointed to the 47 square feet of deck that would become interior

space, and Paul B confirmed that was included in the total. Mike asked about the square footage of the new deck, since dimensions weren't given. Would the total square footage of the newer deck be less? Paul B said that it was slightly larger in square footage. The existing was shown as 265 square feet. The new deck was 273 square feet. The configuration change took it out of the 20-foot lakeshore protection zone. Mike checked that the applicants proposed to remove the stairwell to the lakeshore on the side of the old house. Paul B confirmed. Mike checked that there would be only one exterior staircase going to the lake. Paul B said it was almost physically impossible to go the lake from that structure due to the drop. The staircase mentioned was used to gain access to a service area under the deck.

*Public comment opened:*

Paul Bishop: He was the designer of the remodel. Interference to the neighbors' views would be minimal. He created an analysis to show that it wasn't nearly as bad as the neighbor thought. The structure was less than the allowable 30 feet height of the zoning regulations. No impervious surface was added. There was no soil or vegetation disturbance. There wouldn't be an excavator on the project. It was dealing with the existing structure. They would accept the staff condition for precautions to prevent runoff and debris in the lake. For the kitchen issue, there was an existing full kitchen that would be removed and downgraded to a hot plate and a dorm-sized under-counter refrigerator in a convenience area.

Paul Grinde: He thought the subject had been well covered. He worked with the Redmonds before. There wasn't anyone he'd worked with that cared more about Flathead Lake and taking care of it. If there were specific construction questions that he could answer, he offered to do so.

*Public comment closed.*

Mike commented that when he saw the staff recommend denial of a request, he took that very seriously, and he would look at the proposal to figure out why. He was having a hard time agreeing with the denial personally. From what he'd seen here, this was the kind of work that he'd like to see if someone was going to do a remodel on the lake. They were doing things to pull as much as possible away from the lake. Impervious surface was not being increased dramatically. It seemed like they were following the conditions that he would want someone to do if they were going to work on their property. It seemed like a model, not like some of the after-the-fact things the Board had to deal with. He was torn. He took the recommendation seriously, but this seemed to be reasonable. They weren't doing something he considered dramatic or drastic to the property, from what he saw, and as long as the suggested conditions were met such as stormwater management and the environmental permitted and so forth.

Clarence said that having been a builder, he appreciated how much it cost to build. He didn't think it was reasonable to have to tear down an existing building where to rebuild would cost thousands of dollars, and move the plumbing and so forth 300 or 400 feet

away when you were only 25 feet from the house, and for older people to walk. It didn't make sense to him. He didn't understand the buffer zone being so important when you were sitting on top of a cliff. Everything would just run straight down anyway. The buffer zone would be very important where Clarence lived on Finley Point. The water would get filtered before it got into the lake. On this hill, it wouldn't accomplish very much. He didn't think it was reasonable to tear it down and move [the guest house] somewhere else just because the space was available. He thought they should be allowed to go ahead with what they had, as long as they weren't making it bigger. They were taking stuff away from the buffer zone as it was. He thought they were improving it.

Sue said this was being used, and could still be used. This was an accessory structure. Clarence said they didn't know they were going to have all of this when it was built. He had 2 or 3 homes on his property that wouldn't pass anymore either, but he wasn't adding to them.

Sue agreed with Mike in that she took the staff recommendations to heart. This was a difficult one for her as well. She was more inclined to stand on the side of the staff because she didn't see it as a hardship if they couldn't add another bedroom. The property was still being well used. Clarence said he didn't know that it was exactly a hardship. He had people visit, and you had to have room for them. It probably wasn't a gigantic hardship, but it would be if they had to tear it down and build it. Sue agreed that if they chose to have a larger guest house and they needed to move it, that would be a very costly choice. She didn't know that would be considered a hardship. There was nothing in the report that said this was what they had to do. Clarence said the way the regulations were written, if there was a reasonable place where they could meet the criteria, then that was what they should have to do. He thought in this case, they had to be reasonable.

Sue asked if they were to change the recommendations from the staff, what findings of fact could he use to convince her that they should approve the variance. Joel noted there were alternative findings on pg. 20 through 22. The staff drafted something for the Board to work with. They really struggled with those. The staff tried to write findings in support of approval but those didn't feel very logical.

Mike said if you envisioned that the Board denied this and they moved the house away, it would have to be pushed back near the drainfield. Then you needed a certain distance from the drainfield. It was a narrow piece of property at that point. Would there be variance requests for setbacks or other things, plus proximity to drainfield plus added costs? Sue added this was if they chose to have a larger guest house than they currently had. That was a choice. The Board wasn't saying they couldn't have a guest house. This was a choice to expand a non-conforming structure, or take the non-conforming structure out of play and build a conforming structure. It was a choice. That was the way she was looking at it. It was a choice that they had. Mike understood, but he believed if they took the non-conforming structure out of play, they would move the structure to another non-conforming area of the property, just given the dimensions of the property. The property itself was providing a unique hardship peculiar to that property by the way it was set up. You couldn't move the drainfield closer to the lake.

Robert mentioned they didn't know where the drainfield was. Mike described a drainfield shown on the map. Robert identified that as the replacement [drainfield] easement for tract B. Roland described that their existing drainfield sat under the text that read '15 foot easement for pressure sewer line tract B.' Mike and Roland noted this was right next to the road. Joel and the group discussed items shown on the diagram. Mike observed there were pretty good slopes.

Karl referred to impervious surfaces and moving things back from the lake. These were good things. He thought the issue here was although it was being moved back, it was creating a whole new mass within that setback. That was what staff looked at. It was being moved back, but you were creating more structure next to the lake, a net gain. Joel said it was increasing the nonconformance, by increasing the bulk within the setback. Sue said this was her problem with it. Mike said that when the existing stairwell was removed with the steps going to the lake, the calculation on the difference would show a decrease to the impervious surface, and then [impervious surface] would be increased by 8 square feet after that. Was the difference better or worse? Karl said the encroachment didn't depend on the impervious surface. It was dependent on the structure as a whole for the purposes of these regulations.

Robert agreed with Mike that the applicants were proposing to remove things from the lakeshore protection zone and trying to get things cleaned up as possible. Unfortunately the variance didn't quite fit with the criteria and that was a big hurdle to work with.

Clarence said he spent several years helping to write the regulations before they were adopted, and helped revise them. You couldn't make regulations to fit every lot on Finley Point. He thought they sometimes had to give a little when something came up.

Sue said this was a hard one for her. Joel asked if the alternative findings made sense. Sue replied they were like a stretch. Mike said he took the recommendation very seriously so he looked at this as critically as he could. He also saw that the proposal was entirely reasonable as far as what the applicants were asking. He was balancing it out and asking what was more important. Was the Board here to uphold the strict regulations or were they here to make sure that within the regulations, where there were variances allowed, they actually made a reasonable decision? Joel added also a sound and defensible decision, and Mike agreed. It was tough. In his mind, he didn't see that they were damaging the environment by doing this. They were moving away from the lake and going up with their property, maintaining the footprint where they were. It was more like the case he'd want to show people as to how they might like to do this if they were in this situation: don't expand, go further away from the lake, do what you could to be responsible and try to get as close as possible to living within those regulations and requirements. Joel said this was why they had the Board of Adjustment. Mike said now he was trying to find reasons how he could look at these, throw the recommendation away and make this work.

Sue noted for the granting of a variance, the three of them needed to agree for it to pass, since there were just 3 of them there. A literal enforcement of the zoning ordinance would result in unnecessary hardship owing to unique conditions of the property: she didn't think that was the case. The spirit of the ordinance will be observed and substantial justice done by granting the variance: she could go with that. She believed from what Clarence said that if they granted this, the spirit of the ordinance could still be substantiated because they were removing some things from the lakeshore protection zone. That was a big advantage. What constituted unnecessary hardships? There was a requirement that the petitioner for a variance show that literal enforcement of the zoning will result in unnecessary hardship if it wasn't self imposed. She thought self-imposed was wanting a second bedroom or having a [inaudible] family. Clarence thought it would be a hardship to tear down the building you already had and spend the money to build another one. Sue said they weren't asking for that. They were just asking to add a 2<sup>nd</sup> bedroom because they had a lot of people who visited. That was self-imposed. Clarence said if they had to do that, it would be definitely a hardship, in his mind.

Mike thought that everything you did to a piece of property was self-imposed. He thought the applicants wanted to do the best they could and live within the use of their structure so they created a proposal to do this, which, in his mind, decreased the nonconformance although they were still clearly nonconforming. They were decreasing the nonconformance by moving the deck back and out of the 20-foot buffer and building within the same footprint that they currently had. They weren't going to tear it down or disturb much soil or create a hazard to the lake or the watershed. Sue summarized that he was saying the spirit of the ordinance would be observed by granting the variance. She could go with that. Mike believed that was true. She expressed concern that they'd done these before and those had come back to bite later. Clarence didn't think they'd be setting a precedence if they decided to allow this and Mike agreed. Mike thought they'd set a precedence if they disallowed it. Normally they took things that were reasonable and allowed the landowner to move forward as long as the landowner wasn't being unreasonable in their proposal. Clarence noted they'd approved projects where someone deliberately violated the ordinance and built something without approval. Mike and Clarence agreed that happened too many times.

Mike asked if the Board was ready for a motion. Sue suggested putting into the record some findings of fact to support, if that's what the motion would be. Clarence thought they could do it with the findings of fact on pg. 21. Joel checked if he meant pg. 20 through pg. 22. Robert identified these as item #18. Joel suggested an additional finding that the spirit of the ordinance would be observed and substantial justice done by granting the variance. Mike thought that would be finding 18.h. Joel said that came from the top of pg. 23, and mentioned the court ruling listed there. Robert asked if 18.h needed to be added or if it was already present. Mike said no. They could add it because it was on the record in the report. The general information was part of the record there. It was on page 23 in item 2. Sue asked if they wanted to restate it, since it was part of their findings of fact. Mike thought it became redundant. They could just state that the general information, item #2 would be included in their findings of fact, especially item 2.3. Joel said if a letter was issued, the [inaudible] incorporate that specifically. Mike commented

that then again, the other recommendations that had to be completed before a zoning conformance permit could be issued, such as wastewater treatment, stormwater management and those other conditions, which had to be met prior to issuance. Robert pointed out that recommended conditions started on pg. 24. Joel added if the Board wanted to impose the conditions. Mike said absolutely.

Roland said conditions #8 and #9 were not acceptable to him as written. He felt they were stricter than the zoning. Sue identified #8 as where it couldn't be rented or leased. Mike asked what part of #8 Roland was in contention with. Roland proposed that it read, "The guest house shall be occupied on a short-term basis of less than 30 days by the landowners guests, and always in full compliance with the Finley Point Zoning District and regulations." The mention of rental purposes and no structure on the property told him that he couldn't rent his entire property.

Mike clarified that it was talking about renting either house independently. Roland said that was part of the zoning. Why did it have to be repeated here? Sue replied that this was so it was very clear. Mike added this was so it was very clear in the record that this is an agreement. Roland objected to the word 'ever'. What if the Finley Point regulations changed to allow renting through the winter? He was uncomfortable being bound to something like this that could be pinned on their deed. It didn't seem necessary to him. You could just say 'always in full compliance with the zoning.' Mike asked the staff if Finley Point zoning changed and this measure was struck from the regulations, did that make this condition null and void also or did they have to state that. Sue commented that it wasn't a deed restriction. Joel noted the staff didn't recommend a deed restriction, which was a common thing sometimes. Regarding a change in the regulations, he doubted that would be enforced any longer. It was a point that it could be confusing.

Joel suggested adding something that said per current zoning regulations or something to that effect. Mike thought that would be acceptable. Roland said that would be acceptable to him. He was uncomfortable with the 'shall ever be'. Clarence asked if this applied to everybody on Finley Point as it was now. He knew a lot of people who left for the winter and rented their home to a caretaker. Joel mentioned some were grandfathered. The applicants presented this as a guest house so it was reviewed as a guest house. Clarence asked about the main house. You couldn't rent the guest house. Could you rent your main house? Joel explained you'd have to rent the property as a whole. Sue thought it could be changed to say 'Per current zoning regulations' the guest house shall not be used..., with the rest remaining the same. Clarence and Joel touched further on Finley Point, rentals and guest houses.

Sue asked the applicant what problem he had with condition #9, which limited the footprint they proposed on their plans. Roland said that #9 didn't seem necessary. They had a specific proposal and lots of drawings and documentation to which they would be held accountable. It clearly showed the average height of 23.4 feet. To make reference to all structures on the property didn't seem appropriate to him. Structures on the property were currently bound by the 30-foot height limit of the current zoning. He'd be more comfortable if this condition were dropped entirely. Sue said she would not be

comfortable. Proposals came before the Board and they'd done many conditions saying that this is your plan, this is what you're saying you're going to comply with and what your height is going to be, so that's what it's going to be. She wanted that condition in there. The Board did this regularly. There were times when someone said 'this isn't right, that's not right', and suddenly the plans were different than what the Board approved.

Roland suggested taking out the first part that said all structures on the property shall not exceed 30 feet. Robert said what they could probably do was to replace 'all structures' with 'the guest house'. Sue offered, 'As proposed, the completed structure shall not exceed an average height of 23.4 feet.' Roland said it was already the rule so it didn't change anything. Joel explained the Board members were saying they reviewed a 23.4-foot [tall] guest house, and that was what going there. Clarence suggested taking out the first sentence. Joel said this needed to be written to be a limiting restriction. He also mentioned they might round up to 24 feet. Sue suggested, 'The completed structure will not exceed an average height of 24 feet, as proposed.' Robert thought that would work. He checked that the first sentence was to be removed. Mike affirmed, and #9 would read, "The completed structure shall not exceed an average height of 24 feet." Sue added 'as measured from the natural grade.' Joel suggested using 'as defined by section 11.b and as proposed' instead of 'as measured from the natural grade. Section 11.b was the average building height definition. That was how the staff measured the building heights.

Mike summarized that they were stating, 'The completed structure shall not exceed an average height of 24 feet as defined by section 11.b and as proposed.' Clarence said in the past, the Board approved something like this and the staff went out to check the final building and found it was a foot or two higher than proposed. The other Board members agreed. Mike noted that staff would manage this, once the vote was done. Sue said she was okay with the amendment to #9 as Mike had just stated.

**Motion made by Mike Marchetti, and seconded by Clarence Brazil, to amend condition #8 by adding to the beginning of the sentence 'Per the current zoning regulations' then 'the guest house shall not be used for rental purposes....' Condition #9 shall be modified by striking the first sentence and then 'The completed guest house structure shall not exceed an average height of 24 feet as defined by section 11.b and as proposed.' Motion carried, all in favor.**

**Motion made by Mike Marchetti, and seconded by Clarence Brazil, to approve the Redmond variance request with the changes as discussed, the findings of fact as stated on pg. 20-22 and the terms and conditions as amended by the Board for this request. Motion carried, all in favor.**

### **OTHER BUSINESS**

Paul Grinde rejoined the Board. Status of items for next month was not yet known. Mike checked for other comments. There was none.

**Mike Marchetti, chair, adjourned the meeting at 5:10 pm.**